IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.6557 OF 2005

Mahadev Hamal Majoor Sahakari Sanstha. ...Petitioner.
Vs.
The State of Maharashtra & Anr. ...Respondents.
....
Mr. S.S. Patwardhan for the Petitioner.
Mr.C. R. Sonawane, AGP for the Respondents.
.....
CORAM : F.I. REBELLO, J. AND
DR.D.Y.CHANDRACHUD, J.
January 31, 2006.

P.C.

Rule. Head forthwith.

2. The Petitioner is a successful tenderer. They were issued work order on 7th September 2005 and they commenced the contract on 15th September 2005. It appears that the Government on 28th September 2005 intimated the Collector, Solapur that the tenders sanctioned to the Societies in the Mohol Warehouse have been cancelled. The Petitioner was the only society working at that site. On account of this cancellation, the present petition is filed.

3. On behalf of the Respondents a reply has been filed. In the reply it is pointed out that in terms of G.R. dated 30th March

1994 and most specifically clause 1.5, there had to be at least three tenderers to meet with that requirement. In the instant case, it is pointed out that only Hamal Co-operative Societies could bid for the tender. There were only two tenderers who were eligible as the third tenderer belonged to Majdoor Society and it is on account of this that the tender was cancelled.

4. We have heard the Learned Counsel for the parties. By an order 30th September 2005, we had permitted the Petitioner to carry on the work and at the same time, had permitted the Respondent to accept tenders pursuant to the new advertisement, but not to open the said tenders. At today's hearing, on behalf of the Petitioner, the Learned Counsel points out that no fresh tenders have been received. Our attention was also invited to clause 1.10 of the G.R. dated 30th March 1994 which permits a senior Officer on extension of the tender dates, if there is only one tenderer, to grant such tenderer the contract. It is also pointed out that the G.R. will not apply to the tender for which the Petitioner had bid.

5. In the instant case, as noted, there were three tenderers. However, subsequently, the Government based on the G.R. held

that the Majdoor Society was ineligible. A combined reading of paras 1.9 and 1.10 of the G.R. and the subsequent G.R. relied upon would make it clear that normally there must be three tenderers, but that clause can be waived if after two extensions there is only one tenderer in which event Senior Officer can take a decision to allot the contract. The entire approach seems to be to see that the best offer is received. In the instant case, after considering the three tenders, the Petitioner's tender was found to be the most competitive.

6. Considering that, the Petition can be disposed of by issuing the following directions :

-(i) It will be open to the Collector, Solapur considering para 1.10 of the G.R. dated 30th March 1994, to consider whether the Petitioner's tender can be accepted and if so, to continue the tender for the contracted period of three years.

-(ii) If for any reason the Collector decides otherwise then the Petitioner will continue till such time as fresh tenders are invited and received and the Respondents give the tender to a Hamal Co-operative Society if they are the successful bidder.

7. Rule made absolute accordingly. No order as to costs.

(F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)